

REPORTABLE

Customs, Excise & Service Tax Appellate Tribunal West Zonal Bench at Ahmedabad

REGIONAL BENCH-COURT NO. 1

Customs Appeal No. 10786 of 2025 – DB

(Arising out of Order in Original CUS-SIIB-ALT-83-2025-SIIB-COMMR-CUS-KANDLA dated 07.05.2025 passed by the Commissioner of Customs, Custom House, Kandla)

H R ENTERPRISES

Room No.4, B-13, Navi Chawl,
Siddharth Colony, KN Gaikwad Marg,
Mumbai-400071

.....Appellant

VERSUS

Commissioner of CUSTOMS - Kandla Customs

Customs House, Kandla,
Near Balaji Temple, New Kandla

.....Respondent

APPEARANCE:

Shri Ankur Upadhyay, Advocate with Shri P. P. Jadeja, Consultant for the appellant
Shri Girish Nair, Assistant Commissioner (AR) for the department

CORAM:

HON'BLE MEMBER (JUDICIAL), MR. SOMESH ARORA

HON'BLE MEMBER (TECHNICAL), MR. SATENDRA VIKRAM SINGH

Final Order No. 10636/2025

DATE OF HEARING: 16.07.2025

DATE OF DECISION: 11.08.2025

SOMESH ARORA

1. The Appellant is engaged in the business of import of goods and in February' 2025 they imported 16 consignments of goods declared as "leftover of tarpaulin fabrics mix size and GSM" from supplier M/s. Shaoxing Keqiao Mulinsheg trading Co. Ltd., China. The Appellant filed in-bond bills of entry and the goods were cleared from the port and were stored inside the warehouse of M/s. Cargo Care Agency Shed No.366, FA-1 type, Phase-I, Sector IV, FT & Kandla SEE. M/s. Cargo Care Agency is a SEZ unit having authorized operations of Warehousing service and Trading activity under LOA No. 34/2020-21 dt. 02.02.2021.

1.1 The said 16 consignments were put on hold by DRI, AZU, Ahmedabad vide their letter dtd. 21.02.2025. Subsequently, consignments were examined by the DRI officers under Panchnamas dtd. 23.02.2025 to 25.02.2025. Samples of each type of fabric were drawn during the examination and the sealed samples were sent to CRCL, Vadodara for testing.

1.2 The DRI vide their letter dtd. 20.03.2025 informed that they received specific information that multiple type of fabrics are imported in the guise of Tarpaulin by Appellant at Kandla SEZ under consignee M/s Cargo Care Agency and that IEC of Appellant is being misused for import of fabric. The imported goods under 16 Bills of Entry lying within the warehouse of M/s. Cargo Care Agency were seized vide seizure memo dtd. 01.04.2025 by Customs, Kandla under reasonable belief that the imported goods were liable to confiscation under Section 111 of the Customs Act, 1962 as the goods were mis-declared to the extent that description mentioned in the bills of entry was "leftover fabrics of tarpaulin of mix size and GSM" whereas imported goods were fabrics rolls of different type (Woven, non-woven, coated with PVC/PU etc.). The Customs arrived at possible classification of imported goods under various chapter headings for demanding differential duty.

1.3 At the request of the party, the Ld. Commissioner through the impugned order agreed to allow provisional release of the goods subject to fulfilment of the following conditions: -

a. Submission of Bond equal to the value of goods i.e. Rs. 1,93,77,485/-. The Bond shall contain an undertaking that the importer shall pay duty, fine and /or penalty as may be adjudged by the adjudicating authority, subject to the appellate provisions under the Act and

b. Submission of Bank Guarantee of Rs. 3,12,34,336/-. The Bank Guarantee should contain a clause binding the issuing bank to keep it renewed and valid till final adjudication of the case. In the event of non-renewal of Bank Guarantee as above, the guaranteed amount be credited to the government account by the bank on its own.

2. Appellant feeling aggrieved with the above order has filed the present appeal before this Tribunal. In their appeal, they mentioned the following: -

2.1 The seizure of imported goods having been done from the warehouse of M/s. Cargo Care Agency which is Kandla SEZ as can be affirmed from the panchnama dt. 23.02.2025 drawn at the premises of M/s. Cargo Care Agency. Therefore, seizure of goods within the SEZ Unit is illegal as the customs officer does not have jurisdiction to seize the goods within the SEZ as in terms of section 53 (1) of the SEZ Act, 2005. They relied upon the judgment in the case of Morgan Tectronics Ltd. VS CCE, New Delhi reported in 2015 (316) ELT

276 (Tri. – Del.) (para 8) and judgment of Imran Ahmed Vs CCE, Hapur reported in 2019 (370) ELT 761 (Tri. – All.).

2.2 The seizure of goods is arbitrary and illegal and therefore, goods to be provisionally released without imposing any conditions. The Appellant be allowed to re-export and make clearance of the goods in DTA without imposing any condition and without imposing any penalty. They rely upon the following judgments: -

- (i) Skylark Office Machines Vs CCE, Chennai – 2020 (374) ELT 99 (Tri. - Chennai)
- (ii) SDS Ramcides Crop Science Pvt. Ltd. Vs. Commr. Of Customs, Chennai – II – 2018 (359) ELT 239 (Tri. - Chennai)

2.3 Section 26 of the SEZ Act, 2005, provides for an exemption from any customs duty leviable under the customs Act, 1962 and Customs tariff Act, 1975 or any other extant law, pertaining to goods imported into or services provided within, a Special Economic Zone or Unit, to carry out authorized operations by the Developer or Entrepreneur. This Section is reproduced as under:-

"Section 26. (1) Subject to the provisions of sub-section (2), every Developer and the entrepreneur shall be entitled to the following exemptions, drawbacks and concessions, namely: -

(a) exemption from any duty of customs, under the Customs Act, 1962 or the Custom Tariff Act, 1975 or any other law for the time being in force, on goods imported into, or service provided in, a Special Economic Zone or a Unit, to carry on the authorised operations by the Developer or entrepreneur;

(b) exemption from any duty of customs, under the Customs Act, 1962 or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods exported from, or services provided, from a Special Economic Zone or from a Unit, to any place outside India:

(c)

(d)

(e)

(f)

(g)

(2) The Central Government may prescribe the manner in which, and the terms and conditions subject to which, the exemptions, concessions, drawback or

other benefits shall be granted to the Developer or entrepreneur under sub-section (1)."

From above Section, it is clear that "leftover fabrics of tarpaulin of mix size and GSM" imported by the Appellant whose consignee is M/s. Cargo Care Agency which is a SEZ unit and goods are warehoused within the Kandla SEZ, cannot be subjected to customs duty in terms of section 26 of the SEZ Act, 2005. Hence, impugned order is liable to be modified and provisional release be allowed without imposing any conditions. Further, the imported goods are brought inside the Special Economic Zone which is a deemed foreign territory. There is no question of any payment of duty as duty becomes payable only when the goods are removed from SEZ and brought inside Domestic Tariff Area (DTA). When there is no revenue implication at all, in such circumstance the demand of bond and bank Guarantee for provisional release of the goods is legally not correct. Also, Section 51 of the SEZ Act, 2005 provides that the provisions of SEZ Act shall have overriding effect on any other provisions of law other than this. Thus, the provisions of SEZ Act, 2005 shall prevail over the customs Act, 1962 or Customs Tariff Act, 1975.

2.4 On account of classification and valuation dispute, question of submission of bank guarantee does not arise as held by Hon'ble Punjab and Haryana High Court in the case of 'Om Udyog Vs Joint Commissioner of Customs' 2013 (287) E.L.T. 48 (P & H). Therefore, condition of bond and bank guarantee imposed by the Ld. Commissioner for provisional release of goods is arbitrary and unreasonable and very harsh and thus, liable to be set aside.

3. The learned AR during arguments justified the conditions imposed by the Commissioner for provisional release of the seized goods. These submissions are as follows:-

3.1 Test Reports in respect of 20 out of 40 samples drawn by DRI at the time of examination were received from CRCL Vadodara of which report in respect of 04 Bills of Entry were received in full. The test results of the 04 Bills of Entry along with proposed classification of the goods arrived at Customs Kandla was informed to M/s. Cargo Care Agency and M/s. H R Enterprises vide letter dated 17.04.2025. Personal Hearing was offered on 21.04.2025 which was deferred to 28.04.2025 on the request of the consignee. The remaining test reports were also received by 28.04.2025.

3.2 On the basis of subject test reports, calculation in 12 Bills of Entry could be worked out and communicated to party and consignee while calculation in

respect of remaining 04 Bills of Entry could not be worked out as there were multiple types of fabric rolls and duty calculation was required type wise weight and value of the fabric rolls. It was also conveyed that some of the goods were "prohibited in nature (Minimum Import Price applicable vide Notification No. 77/2023 dated 16.03.2024)". While giving Personal Hearing on 28.04.2025, a request was made to the importer to submit copies of commercial invoices, packing list, assessed copies of Bills of Entry, agreement between importer and their supplier and purchase order from potential buyers in case of the subject 16 Bills of Entry wherein provisional release was sought. Till date of subject order, no documents except for copies of Bills of Entry and Commercial Invoices were provided.

3.3 Personal Hearings were offered on 28.04.2025, 05.05.2025/06.05.2025 but they did not attend and preferred to make their submissions vide letters dated 06.03.2025, 24.03.2025, 27.03.2025, 25.04.2025 & 05.05.2025. No details with regard to the remaining four Bills of Entry and no details of financial transactions to support the import were submitted except for one remittance dated 14.02.2025 amounting to \$ 11,905.25 for one of the Bill of Entry.

3.4 On the basis of the test results and probable classification of goods in respect of 12 Bills of Entry, the differential duty, after factoring the Minimum Import Price of the goods was arrived at Rs.2,83,94,851/-. In view of the provisions of Section 110A of the Customs Act, 1962 read with Circular 35/2017 dated 16.08.2017, a bond equal to the assessed value of the goods imported under 12 Bills of Entry and factoring the Minimum Import Price stipulated in Not. No. 77/2023 dated 13.03.2024 and Security equal to the differential duty of Rs.2,83,94,851/- + 10% of the differential duty as fine and penalties was found appropriate for provisional release of the goods.

3.5 Vide synopsis dated 16.07.2025, learned AR further submitted as under:-

- Samples of all the different types of fabrics, consignment wise were taken and sent to CRCL, Vadodara for testing. All the test reports (40 Test Reports) were received and the Test Results have been conveyed to the Appellant.
- During calculation of differential duty, it was observed that some more information like separate weight of each type of rolls and their separate assessable value were required which was not available in the documents submitted by the importer. Vide letter dated 25.04.2025, the importer and the consignee were requested to submit the packing

list, copies of commercial invoices, purchase agreement with the supplier and agreements with potential buyers if any but these were not provided by the importer.

- With regard to discrepancies found in the Test Results as compared to the description declared by the importer, letters dated 17.04.2025, 25.04.2025 and 01.05.2025 were written to the importer calling for further information but no information was provided by the importer. Also, the importer did not turn up for Personal Hearings fixed on 21.04.2025, 28.04.2025, 05.05.2025 and 06.05.2025 which were communicated to them vide various letters.
- Details of only one foreign remittance of 11,905.25 USD pertaining to Bill of Entry No. 8431416 dated 19.02.2025 was provided and in respect of others, details are still awaited.
- The search under Panchnama (*copy submitted at Page 10 to 13 of submission made on 08.07.2025*) at the Registered Office premises of the importer M/s. H. R. Enterprises at Room No. 4, B-13, New Chawl, Siddharth Colony, Chembur West revealed that the premises, which was a room in a chawl, was owned by one Shri Ravindra Bapu Jadhav. He and other family members viz. Ms. Mrunali Ravindra Jadhav and Shri Pranay Ravindra Jadhav, present at the premises at the start of the search informed that they were not aware about any firm in the name M/s. H. R. Enterprises or any import business.
- Thereafter, one Ms. Harshali Ravindra Jadhav entered the premises and introduced herself as the Director of M/s. H.R. Enterprises. She informed that one Shri Hari Shethiya had taken her documents to start a company for import of fabrics and he only looks after the entire operations of the company. That no business was carried out from the said premises and no documents were available with her. She also informed that she used to receive Rs. 2000/- to Rs. 2500/- per container in return and did not know anything much about the business. The search at the premises also did not reveal any incriminating documents.
- The above shows that on one side, the importer has not co-operated with the investigations, on the other hand, M/s. H. R. Enterprises is a fictitious firm headed by a dummy director as per the panchnama at the registered premises. Even the family members of the director were not aware about the firm or the import business. The Director confessed that she receives an amount of Rs.2000/- to Rs.2500/- per container and that her documents were used by one Shri Hari Shethiya for the firm. Further investigations in the matter would reveal whether the firm

and the imports were actually being controlled by Shri Hari Shethiya or there are more persons involved.

- Even though the advocate for the appellant had orally stated to a pointed question from the Bench that this was the first import by the importer, the quantum of import (16 containers examined + 91 Containers on hold) logically indicates that such previous imports have been made in KASEZ and successfully cleared in DTA. The details of previous imports, if any, at KASEZ have been called for.
- The Bond and Bank Guarantee for provisional release of 12 consignments out of total of 16 consignments have been ordered judiciously following the Circular No. 35/2017 dated 16.08.2017.

4. We have considered rival submissions, records placed before us and the arguments advanced by either side including on legality of seizure. On prima facie consideration, we find that the investigation as expected at the time of provisional release, are still in progress. Some test reports are still to be received or the party who has the right to contest the samples test reports which have been received in the matter before the adjudicating authority to come to the final conclusion. The department has prima facie shown through available test reports that in various samples goods in-composition were not as declared by the appellants. However, before the composition can be finally determined, the appellants have right to seek retest within the stipulated period or at the stage of adjudication, seek cross examination etc. of the experts who have done such testing. The case therefore will finally get established only through the process of adjudication. We also find that valuation by the Department in most cases has been arrived at by either looking at the minimum import price as is stipulated under tariff or import related legislations or it has done its calculation on the basis of specific rate of duty. Only in couple of cases, it has gone by the transaction value, where the charge is based on classification arrived at by the Department as anti-dumping duty was additionally imposable. It therefore, will be only through the ultimate tests of the imported goods, that seizure may finally get sustained or overruled during adjudication. Investigation therefore, at the stage is half baked as the department is in process of filling the gaps by recording statements relevant to the investigation.

4.1 We find that the appellant has raised certain issues, about jurisdiction of the officers to exercise powers once goods have moved to SEZ which is considered de-jure as a territory outside India and has relied on case law to support point of jurisdiction to check legitimacy of imports and also whether any question of duty liability arises when the goods are not cleared from SEZ

to DTA. We find that all these questions about jurisdiction or legitimacy of imports and question of dutability prior to clearance in DTA can be considered only after show cause notice is issued and adjudicating process gets underway. We, therefore, at this stage are not inclined to look into these questions as the case is still under investigation. We at this stage are primarily concerned with the conditions imposed for provisional release of seized goods.

4.2 The appellant has pleaded that they are aggrieved by the onerous conditions imposed as it will cripple their business because there is demand of these kind of products when the rainy season is on. Allowing goods to rot, therefore can lead to severe loss which deserves to be avoided. At this stage, departmental investigations are far from over which need co-operation of all and this process is likely to take time. Therefore, we have to examine the request of provisional release of goods as per Section 110 A of the Customs Act, 1962 and to find out whether, the Adjudicating Authority has placed onerous conditions or not for release of goods. We find that this Section requires the Adjudicating Authority "to impose conditions for release and taking bond in proper form with such security and conditions as Adjudicating Authority may require." We therefore, find that taking of bond in proper form is essential condition and there is no discretion as far as taking the bond is concerned. The discretion of the Adjudicating Authority is available in the phrase "with such security and conditions as Adjudicating Authority may require." We therefore, find the condition of submission of bond equivalent to the value of goods i.e. Rs.1,93,77,485/- is justified. We find that the bond can also, as per Section 110 A contain undertaking that on import of such goods, the duty, fine and/ or penalty as may be adjudged by the Adjudicating Authority subject to the appellate provisions under the Act, shall be paid. Therefore, imposition of condition (A) is upheld.

4.3 The appellant has challenged condition (B) of the impugned order which requires submission of bank guarantee of Rs.3,12,34,336/-, with the direction to the bank to keep bank guarantee alive. We find that this indeed is an onerous condition as the quantum of the bank guarantee includes differential duty of Rs.2,83,94,851/- + 10% of such differential duty as fine and penalty for provisional release of the goods. The very purpose of provisional release gets defeated if at the stage of investigation, 100% of duty and additionally penalty as may be adjudged are routinely demanded and the goods are not allowed to be released by imposition of difficult to meet conditions for release. Purpose and objective of Section 110 A is to allow release of goods before they get damaged or destroyed rather than to recover yet to be ascertained duties and yet to be imposed penalties and thereby, not allowing the goods to

get released. Since, there is no detailed appreciation required to be done at the stage of provisional release of goods, of all evidences that have been brought on record or may be brought on record, later, hence proceedings of the provisional release assume the role of creating balance between the interest of the Department and the party. The conditions should be such that these can meet the conflicting interests of Revenue & the person seeking release. Thereby, revenue can get to secure itself to a reasonable extent in case goods are later not available and the party is assured that the conditions are not onerous so as not to allow itself to take the release, as has been provided in the statute. The Adjudicating Authority has to equally understand that allowing the goods to deteriorate serves no one's purpose i.e. of the party or the Revenue. The supplier of goods will always have financial claims against the importer under Private International Law, even if, the goods get deteriorated or are destroyed. A pragmatic approach is therefore warranted and not a stereotype as is typically getting noticed at the level of this Tribunal of fastening 100% differential duty + a quantum of penalty even if, the CBEC circular and instructions vest such discretion on the Adjudicating Authority while directing provisional release. Adjudicating Authority cannot get prejudiced at the stage of provisional release and take a stand as if it is finally adjudicating the matter and upholding whatever duty can be alleged on completion of the investigation as having been possibly incurred. A half-baked investigation at the stage of seeking provisional release cannot be presumed to be complete so as to concur with revenue's view point in each and every case. The underlying notion while deciding provisional release by the Adjudicating Authority should be to ensure that the conditions are such that release is taken rather than goods staying back and allowed to deteriorate. The circular 35/2017 of C.B.E.C. could stand the scrutiny of Hon'ble High Court of Delhi as reported in 2021 (375) E.L.T. 545 in Additional Director General (Adjudication) v/s. Its My Name Pvt. Ltd. due to the vires being partly upheld as discretion was made available to the officers. Such discretion therefore should not be abrogated through mechanical exercise of maximum duty being sought to be secured. Afterall, "Discretion in Judging is like seasoning in cooking. A pinch is wisdom. A handful is malpractice." – Balancing the conflicting interests is therefore the key to reasonable use of Judicial discretion.

4.4 In the instant case, we find that the duty figures as have been arrived at by the Commissioner can only be worked out if the department's case is taken to be already proved both on classification as well as on valuation. We find that there are many a slip between the cup and the lip. The sample test

reports are still to be tested during adjudication proceedings either by way of their own test reports or by cross-examinations of the experts as may or may not be allowed. All this has been overlooked by the Adjudicating Authority while fixing quantum of Bank Guarantee. At this stage, we are not particularly looking at the process of investigation for collating various evidences by the Department or various decisions on SEZ as contended by the party. We have given sufficient time to both the sides to seek comments and deliberate the issue. We find that on one side we have to "safeguard revenue of the department", which does not mean that at this stage we have to secure every penny that the department may allege against the appellant as Department has sufficient powers under the Customs Act, 1962 and other allied statutes to recover, punish, prosecute or even take action if offender is found habitual. Therefore, purpose of provisional release cannot be to secure every penny of likely duty of the revenue through the goods only and/or to become obsessed by such notion, so as to allow the goods to rot to the loss of every party involved in the litigation. We therefore, in this case and in the peculiar facts of the matter, where goods are in the SEZ direct as follows:-

(1) We direct the importer to join the investigation for its expeditious completion. Though, we are not giving any time bound direction in this matter as discretion is available with the investigating officers, while giving SCN and for Adjudicating Authority, while adjudicating as per the time limits under Customs Act, 1962.

(2) Since the goods have already moved to SEZ through the process of in-bond Bills of entry therefore, the same as per the provisions of SEZ Act, 2005 (which has also a non-obstante clause) can only move either to DTA on payment of duty, or to any other SEZ unit or to an EOU unit etc. as deemed export or can be re-exported but of India.

(3) For every release or movement of goods sought from SEZ on any instrument of bill of entry or shipping bill etc. irrespective of the transaction value and duty involved as may be assessed based on transaction value by the specified officer or Customs officer etc, importer shall be made to deposit 50% of the differential duty so arrived at by the Department on such quantum of goods to be moved or cleared. The specified officer will provisionally assess the duty on clearance to DTA or on movement to any SEZ/ EOU on deemed export as per classification as declared by the party. The Bank Guarantee executed for movement of goods to another SEZ unit or EOU for approved authorised operations, if any, on return shall either be returned to party or

department may roll back the Bank Guarantee to the extent of goods returned to the warehouse.

(4) If the party so desires, they can deposit such duty at one go i.e. 50% of the differential amount of Rs. 2,83,94,851/- or they may pay 50% of the duty worked by the Department, as and when some lot of goods or quantity is cleared. This will tantamount to allowing duty to be paid in instalment by the party at its discretion as and when it finds customers. Such deposit shall be made with the Custom authorities quoting the direction of this order and specified officer shall allow movement of goods only on fulfilment of such condition.

4.5 For the quantity which may be sought for re-export i.e. physical export outside India by the party, furnishing of bank guarantee of 10% of the value of the goods with the Customs authority shall be considered sufficient, as there will be no duty involved.

5. With the above directions, condition (B) is accordingly modified. Appeal partly allowed.

(Pronounced in the open court on 11.08.2025)

(SOMESH ARORA)
MEMBER (JUDICIAL)

(SATENDRA VIKRAM SINGH)
MEMBER (TECHNICAL)